

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
RAMCHANDANI, : Docket #1:19-cv-09124-
 : VM-SDA
 :
Plaintiff, :
 :
- against - :
 :
CITIBANK NATIONAL ASSOCIATION, : New York, New York
et al., : October 7, 2021
 :
Defendants. :
----- : TELEPHONE CONFERENCE

PROCEEDINGS BEFORE
THE HONORABLE STEWART D. AARON,
UNITED STATES MAGISTRATE JUDGE

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<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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HONORABLE STEWART D. AARON (THE COURT): This is Magistrate Judge Aaron, this s the matter of Ramchandani against Citibank National Association, 19cv9124. This line is being recorded. If I could have the parties identify themselves, please, for the record, starting with the plaintiff.

MR. DAVID LURIE: Yes, Your Honor, David Lurie, L-U-R-I-E, and Gary Greenberg, on behalf of Rohan Ramchandani.

THE COURT: Good afternoon.

MR. SAMUEL RUBIN: For the defendant, Sam Rubin from Goodwin Procter, and on the line with me are Marshall Fishman, Bill Harrington and Allison Funk.

THE COURT: Good afternoon. Are there any representatives from the Department of Justice on the line with us?

MR. JEFF OESTERICH: Yes, Your Honor, this is Jeff Oestericher, O-E-S-T-E-R-I-C-H-E-R, from the US Attorney's Office, Southern District of New York, and with me is Sarah Oldfield, as well, from the Department of Justice.

THE COURT: Good afternoon. Is there anyone else on the line who is representing any other

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interested party who would like to note an appearance for the record? All right.

So why don't I just turn to the Department of Justice issues first since they're on the line and, obviously, they're welcome since it's a public proceeding to stay on the line as long as they like, but at least deal with whatever issues there are. I had issued an order, as requested by the Department of Justice, for a document to be provided to me for in camera review in order for me to determine whether to grant the defendants' request that was made pursuant to Federal Rule of Criminal Procedure 6(E). I obviously intend on reviewing the documents once I get them and to analyze them and see whether the required showing has been made under relevant Supreme Court precedent. But obviously I'm happy to hear anything that the government would like to say with respect to that or any other issue.

MR. OESTERICH: Your Honor, this is Jeff Oestericher, we did receive the order, we appreciate that, we will provide that document today, I believe, and we have no objection. I also, just on the tangential issue, have spoken with the parties about a protective order and protective order treatment and I

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believe we're going to be able to work that issue out as well. So from the government's perspective there is no issue.

THE COURT: Okay. And I saw a reference in plaintiff's correspondence with respect to objecting to attorneys' eyes only treatment. I am, we are going to start with attorneys' eyes only treatment, assuming I rule that the testimony ought to be produced. And then if plaintiffs, the plaintiff can make or plaintiff's counsel can make a showing to me with articulable reasons why particular portions of the testimony needs to be shown to Mr. Ramchandani with articulable reasons, I, of course, will give the government an opportunity to be heard on that, but I will consider that at that time. But certainly for initial purposes, if I do order that the grand jury testimony be produced, in the first instance it will be attorneys' eyes only subject to future application from plaintiff's counsel. Any questions about that?

MR. OESTERICH: None from the government.

MR. LURIE: If I may, Your Honor, this is David Lurie on behalf of Mr. Ramchandani, that is fine with me. I did have the opportunity, after submitting the letter to the Court, to confer with Mr. Oestericher about

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that and my understanding, if I have it correct, Mr. Oestericher, is that the government would not have an objection to allowing a limited number of party representatives to review the documents, if that's, am I correct on the government's position on that?

MR. OESTERICH: That is, that is correct. To the extent there's a need, that is correct. And we thought that Mr. Ramchandani likely could show such a need and that there was a possibility that there could be a very limited number of representatives of the defendants who might also be able to show such a need.

MR. LURIE: I just wanted to inform the Court of that, but the procedure that you have proposed, Your Honor, is fine with plaintiff.

THE COURT: Yes, and I should say that if the parties, and I'm including Department of Justice even though they are not technically a party to the case, but if you work out a protective order and agreement that certain persons can view the documents, I'm not going to get in the way of that, I'll so order that. And obviously you can bring any disputes to me on that subject.

All right, anything else we need to deal with, with respect to issues relating to the Department of

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Justice?

MR. RUBIN: None from the defendants.

MR. LURIE: Or from plaintiff, Your Honor.

THE COURT: Okay. So, as I said, Mr. Oestericher, you and your colleague are welcome to stay on the line since it's a public line, but you're also welcome not to. So now I'm going to move on.

I wanted to address, this conference is obviously about certain outstanding discovery disputes. What I would first like to understand and perhaps, Mr. Lurie, you can speak first, what's been done discovery wise in this case? The case was filed in October of 2019. I know that Judge Marrero's decision with respect to the motion, what he construed to be a motion to dismiss, wasn't issued until March of 2021 but, in any event, why don't you tell me what's been done with respect to discovery. I did move the discovery cutoff, but it was October 1st, so I'm trying to understand what happened prior to October 1st that I'm not already aware of. I've obviously seen the document requests that were served some time ago. I saw the interrogatories that were served in mid-September, but tell me what else has been done, please?

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MR. LURIE: Well, Your Honor, what has occurred is that the parties have exchanged discovery requests. Plaintiff has agreed to produce all materials, virtually all materials that defendants have requested, and has responded fully to their interrogatories. So and we're prepared to produce our documents, you know, expeditiously.

Unfortunately, as recounted in the correspondence that you've seen, and as, we've spent several weeks in a fruitless effort to reach agreement with the defendants on the scope of their production. So there hasn't been a document production yet because of that. And we were hoping to, that we could reach an accommodation, you know, with defendants. We've had a series of discussions with them but we've been unable to. So that's the state of play.

I would also note, Your Honor, that in addition to Citibank propounding discovery requests to the government, we have done the same, and the government's agreed to produce the materials that we have sought, which are not Rule 6(E) materials.

THE COURT: Yes, I saw that in your correspondence, right.

MR. LURIE: Yes. So that's what's occurred,

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Your Honor. Certainly, there hasn't been document production yet and I would submit that that is definitely not the plaintiff's, you know, fault in this case. The plaintiff has agreed to produce virtually all documents that are being sought by the defendants and, likewise, provided all the materials they requested in interrogatories.

So now we are at the point, Your Honor, of trying to, you know, move the case forward. You know, it's obviously, it is a complex case and I, you know, I think both parties did not anticipate that we'd be, you know, that we would actually be able to complete it by October, but we would like to move the case forward expeditiously and so that's why we made our application to the Court.

THE COURT: And I suppose it goes without saying that no depositions have been taken?

MR. LURIE: That is correct, Your Honor.

THE COURT: Okay. So when I read the joint letter that came in, thank you for providing it, and just a quick housekeeping matter, it was filed at ECF 41, plaintiff's position states that plaintiff incorporates by reference his September 7th letter. I assume that's just a typo, you meant to say the

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2 September 27th letter that was filed at ECF 39?

3 MR. LURIE: Correct, Your Honor, my apologies,
4 the September 27th letter is what we meant to refer to.

5 THE COURT: Okay. So I saw plaintiff's
6 position, I saw defendants' position, and then I got to
7 plaintiff's reply, and then I got to A and B, I got to
8 proposed resolution --

9 MR. LURIE: Correct.

10 THE COURT: And then what I was hoping to see
11 after that was Citibank's response to the proposed
12 resolution since this was a joint letter, and so has Citi
13 responded to the proposed resolution yet?

14 MR. RUBIN: Your Honor, we have not responded
15 to the proposed resolution. I'd note that the proposed
16 resolution was included as a, as a reply submission
17 that was provided to us the day the letter was due.
18 That said, I do think that the proposed resolution
19 still seeks all documents, very broad discovery beyond
20 what we would submit are the relevant parameters of
21 the case which has focused on the DOJ, the DOJ's
22 prosecution of Ramchandani and the grand jury
23 indictment.

24 So we did not respond to it in the joint
25 letter, we only saw it the day that the joint letter

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2 was due. But it still does seek discovery that we
3 think is beyond the relevant scope for the one claim
4 that is advanced in the complaint and at issue in the
5 case.

6 THE COURT: Okay, so (B)(1) the first sentence
7 says, "Citi should be directed to produce those
8 documents in its possession, custody and control," I
9 assume plaintiff intended the word or instead of and
10 because that would be limiting --

11 MR. LURIE: Yes. I did -- yes, Your Honor.

12 THE COURT: "Concerning FX spot market
13 investigations whether by the DOJ or by other
14 governmental or self-regulatory agencies that concern
15 Ramchandani or his actual or alleged conduct." Does
16 City have any objection to producing documents in
17 response to that sentence?

18 MR. RUBIN: So our position and what we tried
19 to lay out in the letter is that the one claim in the
20 case is concerning the alleged malicious prosecution
21 by the DOJ of Mr. Ramchandani based on allegedly false
22 information that was given to the DOJ. So we have
23 tried to construct a scope of relevance that would be
24 streamlined to those issues. In other words, to be
25 relevant something has to be information that was

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provided to the DOJ and it should have to concern Ramchandani.

The first sentence that Your Honor just read in the proposal that Mr. Lurie gave us is the DOJ or any other governmental or self-regulatory agencies, I think that that is, I think that's impermissibly broad based on the one claim which is concerning the DOJ's malicious prosecution, alleged malicious prosecution of Mr. Ramchandani.

THE COURT: Okay, so let's take out the clause, "or by other governmental or self-regulatory agencies," and let's, I'll read the way that would read for a second, and what that would say is that City should be directed to produce those documents in its possession, custody or control concerning FX spot market investigations by the DOJ that concern Ramchandani or his actual or alleged conduct, does Citi have objection to producing that?

MR. RUBIN: So if I'm understanding, it's to the DOJ and that concern Ramchandani, I don't believe we'd have an objection to that, but I'd note, Your Honor, I believe that's the position that Citi has already taken in its current responses and objections to Mr. Lurie's document requests and in the letter

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that we, that the guiding principle of what should be relevant in this case are things that were produced to the DOJ that concern Ramchandani.

THE COURT: Okay. Now what, did Citi produce documents to the DOJ in connection with the investigation, this FX spot market investigation that do not concern Ramchandani?

MR. RUBIN: Yes, Your Honor, there was an investigation and in 2015 a guilty plea by Citicorp and other financial institutions, and then subsequently, about a little less than two years later, Mr. Ramchandani and other individuals were indicted. But Citi produced documents in response to that original investigation that culminated in the May, 2015, guilty plea.

THE COURT: What's the quantum of documents roughly that were produced to the DOJ?

MR. RUBIN: My understanding is it's approximately in the order of 140,000 documents.

THE COURT: Documents or pages?

MR. RUBIN: Documents.

THE COURT: The problem that I have with limiting the documents that were given, that Citi gave to the DOJ to those that, and I'm now reading from the

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proposal, and I also obviously read it in Citi's letter, but that concern Ramchandani or his actual alleged conduct, there are judgment calls that need to be made and context is eliminated. And those judgment calls, from my experience, as everyone I think is aware, I was 33 years in private practice, the judgment calls oftentimes are made by paralegals or contract attorneys and who aren't familiar with the lingo and the context, and by trying to slice and dice in that way things are lost. And, you know, the allegation, the allegations are, and obviously they haven't been proven but they're merely allegations in paragraph 85 of the complaint, is that there was a campaign to identify Ramchandani to both government investigators and the press that's uniquely culpable. And if there's evidence in what was produced to the DOJ that would implicate others by way of example, that presumably would be probative of malice. That Citi, and I'm not suggesting that this is the case, of course, I'm merely commenting on the problem with Citi holding back, for lack of a better term, the full set of what was given to DOJ as opposed to what it is that Citi or its designees determined concern Ramchandani or his actual or alleged conduct.

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By the way, I feel differently, until I hear more about other governmental or self-regulatory agencies, because this case, as I understand it, is about the malicious, the purported malicious prosecution by DOJ of Ramchandani. That's not to say that I'm foreclosing any arguments or inquiry into what other sets of documents there are and all that, but honing in on the DOJ documents, the problem I have is drawing the lines. And that there's a protective order in place, and that this is "ancient history," and I'm using that term in quotes, and you can create in the first instance some attorneys' eyes only category so that Mr. Lurie and his colleagues can look at this stuff, but I'm having a hard time understanding why the documents given to DOJ, the folks that brought the prosecution, writ large ought not be turned over?

MR. RUBIN: Right. if I can respond to that, Your Honor, I mean to begin, we agree with Your Honor's inclination that within the DOJ, the DOJ construct should be the focus. One thing we tried to do with plaintiff to I think allay the concern that Your Honor has just raised about framing out what exactly within the DOJ productions is concerning

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Ramchandani, is that we've sought to try to engage in search term protocols where we could try to come to some sort of agreement to frame out what exactly it is that Mr. Lurie would be looking for within the total population of what was given to the Department of Justice.

We never, at first we thought we were making some headway and we were going to see such proposal, but we never did. And to this point the, and prior to this proposal that is included in the draft that we got on the day it was due, Mr. Lurie's position has been focused on all investigations, whether they have any nexus to the DOJ or to Ramchandani, to that matter. So I say that by noting that within the DOJ construct that Your Honor just described, we would entertain looking at search term protocols to try to put some precision and agreement around what concerns Ramchandani and what might be considered relevant to the case. But to this point, that hasn't been an option with Mr. Lurie.

THE COURT: Mr. Lurie, I'm going to give you an opportunity to be heard, you can rest assured about that, okay?

MR. LURIE: Sure.

THE COURT: But here's, having search term protocols, and I am going to order the parties to meet and

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confer about this, right, I know the responses to the interrogatories aren't due yet where you're going to identify who the witnesses are, you need to, when it comes to e-discovery writ large, as you do in every case, you need to come up with custodian search terms and date ranges. That's to gather documents from ESI sources, primarily emails of folks that are likely to have information that's relevant to the claims or defenses I put that to one side.

Here we have a bucket of documents that were given to the prosecutors, to the folks that decided to bring charges against Ramchandani. The problem with search terms in that context is, you know, these were the documents given to the folks that allegedly were, I don't know, and I'm using my word, I'm certainly not using Judge Marrero's, but manipulated by Citi, allegedly, and maybe they refer to Ramchandani as the bad guy and Mr. Lurie doesn't know to look for the words the bad guy.

But talking about that universe of documents, it's a discreet universe of documents, 140,000 documents, it was given to the prosecutors and, again, I feel differently with respect to ESI writ large, there you need to have search terms obviously, and

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date ranges, and custodians, I'm going to be very proportional. I can assure you Mr. Lurie is not going to get 200 custodians, it will probably be more like 6 or 10 because I need to keep in mind all of the factors that I'm supposed to keep in mind when it comes to proportionality, but again, the DOJ group of 140,000 documents, certainly isn't burdensome because I assume you have them on a thumb drive or can put them on a thumb drive, and you have a protective order in place. And as I said, if you're concerned about some level of, I think they're somewhat dated, that's why I said they're ancient history, so presumably don't contain competitively sensitive information, but even if they do, it's something that you can put at attorneys' eyes only restriction on. But I guess what I'm saying is unless you tell me something really convincing, I'm going to order you to produce the documents that were given to DOJ in connection with this investigation, whether they concern Ramchandani or not.

MR. RUBIN: Right. The only point I'd make, Your Honor, is that we would be reviewing the documents and attorneys would be conducting the review. We also would work with Mr. Lurie to develop

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the search terms to make sure we weren't missing anything. And the objection that we raised to producing the entirety of what was given to the DOJ is only that the case is, the case is focused on the DOJ's, you know, allegedly false information provided to the DOJ concerning Ramchandani, that's the, that's I think the second sentence of the motion to dismiss decision. So that was the basis for the position and we'd certainly be willing to confer with Mr. Lurie if we could try to achieve some of that structuring and streamlining.

THE COURT: Okay, well I'm going to order that the production that was given, the 140,000 documents that were given by Citi to the DOJ in connection with the FX spot market investigation be produced to plaintiff reasonably promptly. I mean I gave, I moved the deadline only to November 15th understanding it's going to be moved again once we get our arms around the rest of discovery. So is thirty days enough time for you to produce that stuff or can you do it faster?

MR. RUBIN: I think thirty days should be sufficient, Your Honor, I don't want to commit to doing it faster without conferring with a few people on our end, but I think that should be sufficient,

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Your Honor.

THE COURT: Okay. Now I want to turn to other governmental or self-regulatory agencies. What other governmental or self-regulatory agencies conducted investigations concerning FX, the FX spot market?

MR. RUBIN: I'm sorry, could you repeat the question?

THE COURT: Of course. What other governmental or self-regulatory agencies conducted investigations of Citi concerning the FX spot market?

MR. RUBIN: Sure. Your Honor, there were extensive investigations worldwide, I believe there were approximately 19 different investigations, some larger than others, but where information was provided to government regulators.

THE COURT: And the one that I saw mentioned was in London, is it the FCA, SFA, is that one of the larger ones?

MR. RUBIN: Correct, FCA, Financial Conduct Authority, correct.

THE COURT: And then did the SEC conduct an investigation?

MR. RUBIN: There was correspondence with the SEC, I don't believe that the SEC conducted an

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2 investigation, or if there was, it wasn't, there
3 wasn't a significant one.

4 THE COURT: Was it the CFTC, sorry?

5 MR. RUBIN: There were productions made to the
6 CFTC.

7 THE COURT: Right.

8 MR. LURIE: And the OCC, Mr. Rubin, am I
9 correct?

10 MR. RUBIN: Correct.

11 THE COURT: Could you say that again, Mr.
12 Lurie?

13 MR. LURIE: Certainly, the OCC, Your Honor.
14 There is a list, there is a list, I cannot represent
15 that it is complete because I didn't prepare it, but
16 there is a list of agencies that Citibank has
17 represented in related arbitration conducted
18 investigations. And Citibank actually has argued that
19 Mr. Ramchandani is responsible for various settlements
20 and penalties that the, that Citibank or its
21 affiliates paid in connection with the FOREX matter.
22 So the way that I got that list was that Citibank
23 listed it and said we were investigated by all these
24 agencies and Mr. Ramchandani is responsible for the
25 various penalties that the bank paid.

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2 If I could, Your Honor, I would like to
3 address, if this is an appropriate time, why --

4 THE COURT: You want to talk me out of what
5 I've already ruled in your favor on, I'm not sure what
6 you're addressing?

7 MR. LURIE: Yeah, well I was going to, I know
8 you haven't ruled and, yes, I'd like to address your
9 tentative view on the relevance of these other
10 investigations, okay. And as a precis I wanted Your
11 Honor to be aware of the fact that Citibank has argued
12 that they are very relevant. And, in fact, Citibank
13 asked us to produce documents related to one of these
14 proceedings until it, until it terminated in Mr.
15 Ramchandani's favor. And I know that Your Honor has
16 had the opportunity to take a look at the motion to
17 dismiss rule, so I don't want to rehearse the entire
18 contents, but the premise of our case as alleged is
19 that Citibank made Mr. Ramchandani into a scapegoat,
20 folks at Citibank affirmatively knew --

21 THE COURT: No, I understand that. Here's
22 what I'm going to order with respect to the other
23 governmental or self-regulatory agencies using the
24 words from your proposed resolution (B)(1). The
25 parties need to meet and confer. I am not going to

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order Citibank to turn over every document produced to those 19 entities. Because what it's going to be, of course, is emails and other documents that probably will overlap to some extent with those that were given to DOJ. What you should meet and confer about is communications with those agencies with regard to resolution of, or with regard to the investigation, however it is you worded it, certainly, there is nothing attorney-client privilege about them because those agencies were obviously adverse. Because if there are communications in there that either implicate or point a finger at Ramchandani, I think that goes to mental state, that goes to, you know, whether Citi was out to get him, for lack of a better term. Similarly, if there are communications in there that point the finger at someone else, then potentially those could be relevant to the claims or defenses.

But in terms of the document production writ large made by Citi to these various agencies, first of all, I don't think it's relevant in and of itself, those productions, to the claims or defense, but certainly it's not proportional to the needs of the case given that I've ordered Citi to produce that which was produced to the prosecuting agency where you claim the malicious

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prosecution. So the parties should meet and confer about those communications, and as to how to search those, I think that will be a fruitful area to be utilizing search terms to try to come up with things that are going to capture things that relate to Ramchandani. But I am not going to order at the moment that Citi turn over all communications with all 19 entities. If it's limited to Ramchandani I'd feel differently, by the way, if there are communications that are specific to Ramchandani and what Ramchandani did, that, to me, is, those communications are relevant to claims and defenses because it goes to Citi's state of mind. Again, repeating, not the actual documents that were produced to these agencies, rather, communications with them trying to convince them not to bring charges, in resolution of charges, things of that kind, Ramchandani gets to see whether Citi was trying to throw him under the bus, for lack of a better term with other agencies, as Ramchandani alleges occurred with respect to the DOJ.

But, again, the parties need to meet and confer about the scope of what's required to be produced vis-à-vis the communications with these other governmental or self-regulatory agencies. I'm happy to hear any questions or comments about what my order, my order is going to say something along those lines about what you're meeting and

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conferring about, but I'm happy to hear any questions or comments about that.

MR. LURIE: Your Honor, this is David Lurie, if I could respond briefly?

THE COURT: Yes.

MR. LURIE: First of all, that, in concept, everything that Your Honor stated is entirely, you know, makes sense to me as a protocol. And, in fact, it's what I've been trying to, you know, over the past several weeks, to reach agreement with plaintiff on. That is a way to get into these materials that focuses on the relevant material. As Your Honor stated, if it's material related to, excuse me, concerning, I don't want to use the (indiscernible) from the Federal Rules, concerning Ramchandani, as Your Honor just stated, it's all presumptively relevant and, you know, should be produced.

It is also relevant, as Your Honor stated, potentially highly relevant if it's material that concerns other alleged wrongdoers. And it is relevant both on the malice prong, as Your Honor just stated, but also on the related scienter prong that the Court identified in its ruling. That is Judge Marrero properly stated that we have to, we will have to show

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that Citibank knew that Ramchandani did not engage in wrongs and that Citibank was motivated to focus the government on Ramchandani because it was aware of other wrongdoing by individuals elsewhere in the bank.

So we are entirely agreeable with that. We will, if Your Honor so orders we will, you know, negotiate in good faith with Citibank in an effort to, you know, come up with a practicable way to get that material identified and produced.

THE COURT: Any comments from Citi?

MR. RUBIN: No, Your Honor, we understand and we will proceed in good faith, meet and confer with Mr. Lurie on that issue.

THE COURT: Okay. Now with respect to category two of the proposed resolution, this is another area where you need to meet and confer. First of all, it's not ripe because the deadline to respond to the interrogatories hasn't even come, but what the parties need to meet and confer about is what I said regarding emails and other ESI writ large. And that is come up with a reasonable number of custodians, a reasonable number of search terms, and a reasonable date range. And you're going to apply those two those custodians, date ranges and search terms and try to come up with a

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2 compromise.

3 I will tell you that, given that Mr. Ramchandani
4 is getting the DOJ production and is going to be getting
5 communications with the governmental and self-regulatory
6 agencies concerning him and his conduct and the conduct of
7 other alleged wrongdoers, I think that's where the beef
8 is, for lack of a better term, and I'm going to be viewing
9 the proportionality issues vis-à-vis what I'll refer to as
10 fresh emails. I mean in my experience the DOJ is a very
11 thorough agency and doesn't, I'm trying to think of the
12 right word, so the documents and emails that they
13 received I think are the set of the most, what's
14 likely most relevant. I'm not foreclosing you, Mr.
15 Lurie, from going on, from seeking fresh documents
16 from emails, I think you're going to find, obviously,
17 after you engage in this exercise, that many of the
18 emails that you turn up using your custodians, date
19 ranges and search terms are going to be duplicative of
20 that which is in the production which was made to DOJ,
21 but I think you are entitled to a proportional and
22 reasonable set of search terms, custodians and date
23 ranges. But I'm going to leave it to you after you get
24 responses to the interrogatories to negotiate with Citi as
25 to what those parameters are.

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The other thing I'll say is there is nothing wrong with starting with, you know, for lack of a better term, the low hanging fruit. The folks whose names are mentioned in pleadings, for example, and in Judge Marrero's decision, you know, and then having a second wave, for lack of a better term, and also once you look at the DOJ production there may be certain names that stand out over others but there is nothing to preclude you from trying to get a couple of more custodians if you can show, based upon the documents you've been provided, that there's a basis to get those documents and perhaps you can even target in on a specific date range or specific set of search terms with respect to one or two additional custodians.

So I do not think that you are going to be foreclosed by whatever your initial set of custodians is, but I would encourage you, Mr. Lurie, to be, to be reasonable, I guess.

MR. LURIE: Sure.

THE COURT: And the goal is not to impose burden here, the goal is to get what you need in order to prove your case.

MR. LURIE: I can assure Your Honor that we'll take that approach. I want to put a little meat on the bones about the purpose for these interrogatories

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that we propounded and what materials we are going to be seeking in part based on the response that I hope to receive from them.

Citibank (indiscernible) person to person meetings with the DOJ. We know about certain of those meetings because one of Citibank's lawyers gave an account of several of the meetings that has been reduced to writing in connection with the OCC proceeding that I mentioned earlier. So it's kind of an unusual circumstance, one of Citibank's lawyers, and they were the ones who took the lead in these meetings, gave an account of a number of the meetings.

What we have learned, including as a result of Citibank's recent request, Touhy request to the government, is that there were additional meetings with the government that we were not aware of. And I'm not accusing, I want to be very clear, Citibank's lawyers of not disclosing these other meetings, there are various reasons why they may not have believed that they were required to disclosed them previously in connection with the OCC proceeding. But we're trying to identify those meetings because, as Your Honor stated, there might not have been communications, we don't know, you know, fulsome communications like emails, but there were fulsome

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2 communications orally in these meetings, some of which
3 were with very high level people at the DOJ, some of which
4 were (indiscernible) level people at the DOJ, and some of
5 which included both categories. So we're trying to get,
6 identify those meetings, so that we can identify the
7 relevant custodians at Citibank as you suggested, Your
8 Honor, and also focus our discovery requests on
9 getting materials related to those meetings.

10 THE COURT: No, I understand, and I anticipate
11 that Citi is in good faith going to be responding to
12 these. In all candor, I haven't studied the breadth of
13 all of them. I mean certainly, Mr. Lurie, what you're
14 suggesting as you want to know what the meetings were
15 and who was in them so you can identify custodians,
16 that seems to me to be a reasonable approach. And
17 obviously I'm happy to hear from Citibank if, this is
18 not intended to box you in by any means, because you
19 have the right to respond and object to these
20 interrogatories, but maybe Citibank could just
21 comment, high level, not committing yourself, as to
22 whether you think the approach being suggested by Mr.
23 Lurie of identifying custodians based upon who
24 attended various meetings is a fair approach.

25 MR. RUBIN: Sure, I can respond to that, Your

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Honor, and thank you for the caveats, because we are still, we only received these on September 18th and we're still, we're still working on the response. But, generally speaking, the interrogatories break into similar, break along a similar line of demarcation to the issue that we've been discussing previously in that there are requests that ask for identification of the dates and participants of meetings between Citibank and the DOJ, and then the identification of all documents concerning those meetings with regard to meetings between Citibank and the DOJ. And then there's sort of a mirror image of those two interrogatories for everyone else, other, all other governmental authorities and self-regulatory organizations.

I think it becomes somewhat more complicated and potentially more burdensome to, for lack of a better word, put the cart before the horse on these discussions about what are the search terms and the types of proposals that Mr. Lurie would make to us with regard to the other regulatory questions. Particularly because, and I think these issues somewhat come together because there's a bit of a gating issue here with the production of the DOJ grand jury materials, as well.

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You know, as we noted in our letter, our view is that the scope of relevance here is solely about the DOJ's prosecution of Mr. Ramchandani based on allegedly false information that was supplied to Citi and we expect and hope, once Your Honor is able to look at the DOJ production in camera, that we'll be able to perhaps streamline some of what is necessary here. And I only mention that in the context of the interrogatory because it's one thing to consider some targeted search terms that Mr. Lurie might propose to us in good faith and with reasonableness, it's another thing to try to identify in an interrogatory response every meeting, every person, every document that might evidence a meeting between Citibank and any other regulator that was looking at FX when, as we've said in our letter and I think it's worth noting here again, we think that the focus should be on the DOJ, the prosecution, the information that was supplied to the grand jury. And we think some of that may, may streamline what's really relevant in this case.

MR. LURIE: This is Mr. Lurie, if I could respond, Your Honor, if that would be helpful to the Court?

THE COURT: Briefly.

MR. LURIE: Yeah, sure. What really concerns me, with all due respect, about that response, Your

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Honor, is that it indicates, you now, a reticence to comply with the direction that Your Honor gave just a few minutes ago. For example, Judge Marrero made clear (indiscernible) he said to other regulatory agencies, including and especially about Mr. Ramchandani, as well as other potential targets, is relevant here.

If Citibank is going to persist in arguing that it, for example, as I just heard, that it's going to come back to the Court to argue that it doesn't have to produce materials related to what it said to the FCA, what it said to the FCA is cited and relied upon, that is what we know to date about what they said about, you know, to the FCA, was cited and relied upon by Judge Marrero. And so because it goes to Citibank's knowledge and malice, as Your Honor stated.

So as long as we can proceed along the route that Your Honor suggested, it will be productive, but it is important, it seems to me, not to deviate from that. And if we're going to be faced with continued arguments that Citibank had edited this to only materials that they deem to concern Mr. Ramchandani, and only materials they deem to concern the DOJ, you know, we're going to have a problem because we'll just

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be back, you know, in front of the Court soon.

THE COURT: All right. So just to, I'm not making any rulings on this, but just to preview some observations about the interrogatories. Three and four are troublesome to me because of the burden they impose. First of all, they are outside the scope of 33.3 of our local civil rules because they're not asking for, one and two ask for witnesses, they also ask for dates which I think makes sense in context, but it asks for essentially the identity of witnesses, participants in certain meetings. Three and four are a step removed, you want a document to be identified that states the dates and the participants and that, to me, is just a burden, it's an undue burden. And if, as a way to answer one and two, Citi wants to produce documents sufficient to show, in other words, three and four want to identify documents sufficient to show the answers to one and two, that kind of thing. But I would look favorably upon objections to three and four under grounds of burden. On the other hand, if it's not burdensome, you have these documents laying around, for lack of a better term, that's fine.

My comment on one is, you know, it's limited to DOJ and that seems to be targeted. And as I

1 indicated, for the same reason why in the production
2 made to DOJ I don't think that Citi should be slicing
3 and dicing. In terms of meetings that were held with
4 DOJ, I think you should give the list of people who
5 attended these meetings, and I don't know how many
6 there are, it may be that if Mr. Lurie, if there's
7 dozens and dozens and Mr. Lurie tries to get all of
8 them as custodians, I'm going to cabin those, but
9 giving the names of who met with DOJ regarding this
10 investigation obviously is not going not going to get
11 lawyers. I suppose they could talk about what they
12 said to DOJ, but it's certainly not going to get
13 anything that they said to folks at Citi.

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15 But, two, what I'd be sensitive to is a
16 proportionality argument for arguing that you don't
17 need, Mr. Lurie doesn't need all 19. Certainly, FTA,
18 OCC, FRB, those are, for lack of a better term, the
19 big players, I assume, and what one off comment was
20 made in a meeting to the Brazilian Administrative
21 Court for Economic Defense, again, Mr. Lurie, you'll
22 have the opportunity if they object to that to come
23 back and explain to me, oh, Brazil is all important
24 here. But it seems to me there comes a point where you
25 don't need all 19.

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MR. LURIE: No.

THE COURT: If Citi was going to through Ramchandani under the bus, they wouldn't have done it only with the Brazilians, they would have done it with the big fish, the FTA, the OCC and the FRB, and that's where, that would be enough for you in order, if it happened, in order to make out your scienter and malice case. And you don't need to --

MR. LURIE: Could I respond to that -- oh, I'm sorry, apologize.

THE COURT: You don't need to literally turn over every stone. I will let you briefly respond, Mr. Lurie.

MR. LURIE: Oh, sure, I apologize, I didn't mean to interrupt Your Honor, and I understand where you're going, obviously, conceptually. One thing that's important, and it has to do with the relative information deficit that we have on our side of the table, okay, is that our understanding, including based on at least one, at least one guilty plea and one indictment of other Citibank personnel, is that the wrongdoing that Citibank was concerned with, as I said in one case it led to a guilty plea in the Southern District, concerned actually developing and,

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you know, small country currencies, primarily. For example, the South African was the subject matter, in part, of one of the criminal, as I understand it, a guilty plea in the Southern District.

So, you know, I just hesitate to agree with the proposition that, quote-unquote, "the small players are irrelevant," because if it so happens that what we believe is the very serious wrongdoing that Citibank was attempting to divert attention from involved those small currencies. Parenthetically, the reason it did is because those are currencies that, unlike the dollar and the Euro, are actually susceptible to manipulation.

So there was -- so I, you know, I'm interested and willing and have been from the beginning to have a dialog with Citibank about limiting the scope, but I am saying that in order to capture what we want, which is knowledge by Citibank of wrongdoing by others, it may go beyond the FCA.

THE COURT: Yes, so there's two different concepts, actually there's many concept in the Federal Rules of Civil Procedure, two relevant concepts here, one is relevance and one is proportionality. And the devil is in the details and proportionality actually

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has five or six different elements. Obviously, if you can show that with respect to some small country or some small regulator there's a smoking pistol where, and, therefore, you absolutely need to have that, okay. But, otherwise, just to say that things that were said to the 19th regulator are relevant, we need to draw a line somewhere and proportionality is a very subjective thing, I'm speaking about it before the Sedona Conference, for better or for worse, in a couple of weeks. And there are people who spend their lives now since 2015, and it was in the penumbra before 2015, I suppose, trying to figure out what proportionality means. But I think it's very discretionary in my judgment and I am not going to deprive the plaintiff of information that he needs to prove his case, certainly.

MR. RUBIN: Understood.

THE COURT: But on the other hand, I'm not going to subject Citibank to an undue burden. And I expect both sides to, in good faith, negotiate and compromise. We no longer, not that the Federal Rules ever permitted the turning over of every stone, but now we don't turn over every stone, we search for where information is likely to be and, as you know,

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Mr. Lurie, whatever is produced in discovery, should you go to trial and not settle this case, you'll use one-tenth and maybe one one-hundredth of those documents that you're going to put before the jury and the jury is going to, it's going to be a few witnesses and a few documents that they hone in on. So let's be sensible as we move forward and let's be cooperative with one another, please.

MR. LURIE: Understood, Your Honor.

THE COURT: So that's all, I mean so the parties, with respect to discovery, need to meet and confer in good faith, and if there are disputes you're going to come back to me. But, so the only ruling I'm making at the moment is that Citi shall produce the 140,000 documents that were produced to the DOJ and shall do so within 30 days, and the parties should met and confer, come back to me if they have disputes regarding, as I said, the communications with the various agencies, as well as search terms and custodians and date ranges. And once the parties have had a chance to talk, come up with a reasonable extension of the discovery cutoff, because obviously November 15th isn't going to cut it, but we need to get a date in place so that this case doesn't drift.

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MR. RUBIN: Understood, Your Honor.

THE COURT: So I'm going to ask for a joint status letter probably 45 days out. If I hear from you sooner, fine, but otherwise I'll set a date for a joint letter from both sides telling me kind of where things stand. I did received, just so the parties are aware, as long as we're on the phone, an email from Mr. Oestericher in camera sending me the transcript of the grand jury testimony of Matthew Gardner, and which I obviously will review and make a ruling on as previously discussed.

All right, with that, since Mr. Lurie's been doing a lot of speaking, I'll give Mr. Rubin or whoever wants to speak on behalf of the defendants an opportunity to raise any other issues they want to raise before I turn it back to Mr. Lurie?

MR. RUBIN: Thank you, Your Honor. I guess the one thing that I would hope to raise is whether there, and maybe the answer is Your Honor requesting a status update in 45 days, but some of this, some of what we've discussed here does seem somewhat related to the grand jury developments that Your Honor has just received in camera. And on our side, from where we're standing, where wondering whether there could be any

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type of gating of some of these issues, particular with regard to non-DOJ related discovery.

 You know, as we laid out in our letter, we do think under the Second Circuit's *Rothstein* decision, that we're entitled to a presumption of probable cause which is, itself, a complete defense to the claim, and that Mr. Lurie will be required to show bad faith, fraud, perjury, in the grand jury. That was one of the things that Judge Marrero cited on page 26 of his decision that he was giving a plausible inference that Citi decoded communications from Ramchandani in procuring the indictment. That's how Judge Marrero ruled on the probable cause element. And we're submitting that perhaps we could stage some of this with regard to the other regulatory aspects of this and focus in on the DOJ, particularly since the Department of Justice has provided the testimony that we've requested to Your Honor.

 THE COURT: Yes, it seems to me you're trying to argue in discovery the merits of your position. I get your position and I'm obviously not passing on the merits of your position. It may be that Citi is absolutely right. But what Judge Marrero stated was that malice is an element that the plaintiff has the

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burden to prove. And communications with other regulators, again, I'm not making you turn over the production given to them, but rather communications with them about Ramchandani and potentially, and I'll use this term, other wrongdoers, can be probative of that.

The other thing I'll note is that Judge Marrero cited Citi's communications with the SEC and the FCA in his decision denying the rule 12(B)(6) motion, pages 4, 7, 18, 27. So I am not going to limit in discovery, as you suggest. It may be that Citi gets, when all the dust settles, Citi gets summary judgment because there's no there there but, again, I'm trying to be proportional. I'm not saying that the plaintiff ought to get communications with all 19 regulators. As I indicated, I think there ought to be some compromise there and you should go after the, provide the big fish, for lack of a better term, and if you're right that there is no there there, then perhaps Mr. Lurie will not be interested in pursuing the others. It seems to me, if you weren't throwing Ramchandani under the bus with the FCA, then you wouldn't have been doing it with the Brazilians because you would have much more incentive to throw

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him under the bus with the FCA by way of example. But just because, and I haven't read this transcript at all, but let's say I were, that, you know, what you're saying is correct, that it aligns with your theory of the case, this testimony, that doesn't mean since the plaintiff has the burden of proof he's not entitled to see what was said to the other regulators, particularly in circumstances where Judge Marrero, himself, makes reference to those communications.

So, again, I'm not --

MR. RUBIN: Understood, Your Honor.

THE COURT: I'm not making any rulings at this point, but I'm signaling if a dispute is brought before me about communications with regulators, how I'm likely to rule.

With respect to the larger, more important regulators, I don't see how you, how I stop plaintiff from getting access to those, so he gets to test the waters and see whether, what Citi is saying is true. He doesn't need to take your word for it, I suppose, is what I'm saying.

MR. RUBIN: Understood, Your Honor, thank you.

THE COURT: All right. Anything else from Citi's side?

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MR. RUBIN: No, Your Honor.

THE COURT: Okay. And, Mr. Lurie, anything else on your end?

MR. LURIE: No, Your Honor.

THE COURT: All right, so you can expect a ruling. Given our schedule this afternoon, it may not, I typically do things the same day, it may not go out until tomorrow, but you already know pretty much what it's going to say.

So I thank the parties for their participation and this matter is adjourned. Thank you.

MR. RUBIN: Thank you, Your Honor.

MR. LURIE: Thank you, Your Honor.

(Whereupon, the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of Ramchandani versus Citibank National Association, et al., Docket #19cv9124, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature *Carole Ludwig*

Carole Ludwig

Date: October 11, 2021